

MICHAEL L. TRACY, ESQ., SBN 237779
MTRACY@MICHAELTRACYLAW.COM
MEGAN E. ROSS, ESQ., SBN 227776
MROSS@MICHAELTRACYLAW.COM
LAW OFFICES OF MICHAEL TRACY
2030 Main Street, Suite 1300
Irvine, CA 92614
T: (949) 260-9171
F: (866) 365-3051

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Attorneys for Plaintiff Douglas Roberts

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DOUGLAS ROBERTS , AN INDIVIDUAL;

Plaintiff,

vs.

TRIMAC TRANSPORTATION SERVICES
(WESTERN), INC., A DELAWARE
CORPORATION; ,

Defendant.

Case No.: 5:12-cv-05302-HRL
COURT RULINGS RE
PLAINTIFF'S OBJECTIONS TO
DECLARATIONS OF ANNELISA
SHAW AND ROBERT PENICKS
OFFERED IN SUPPORT OF
DEFENDANT'S REPLY

Hearing Date: August 27, 2013, 10:00am
Judge: Hon. Howard R. Lloyd
Depart: #2, Fifth Floor

Date Filed: October 15, 2012
Trial Date: NONE SET

Pursuant to Local Rule 7-3(d)(1), Plaintiff Douglas Roberts hereby objects to the
Declarations of Annelisa Shaw ("Dec. Shaw") (Document #56-3) and Robert Penicks
("Dec. Penicks") (Document #56-2) offered in support of Defendant's Reply Memorandum
in support of its Motion for Partial Summary Judgment on Plaintiff's Meal Break Claims.

	Statement	Location	Objection	Ruling
1..	"The U.S. Employee Handbook specifically states in Paragraph 50 that it does not cover all aspects of the employee's employment and that employees should consult the Human Resource Department regarding any questions they had."	Dec. Shaw, ¶5 Pg. 2 Lines: 9-11	Best Evidence FRE 1002. The best evidence of the content of the employee handbook is the handbook itself. That language does not appear to be included in paragraph 50.	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled
2.	"State specific requirements were handled at the branch level."	Dec. Shaw, ¶5 Pg. 2 Line 12	Lacks personal knowledge FRE 602	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
3..	"To the contrary, the drivers are excluded from the U.S. Employee Handbook's general guidance on meal and rest breaks because drivers are subject to other rules and regulations regarding when they can take meal breaks."	Dec. Shaw, ¶5 Pg. 2 Lines: 13-15	Lacks personal knowledge FRE 602 Best Evidence FRE 1002.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled <input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
4.	"Specifically U.S. Department of Transportation regulations have specific guidance on when drivers can log duty as off-duty time to take a break when they are transporting freight, and drivers are explained these regulations at the Trimac Learning Center when they are first hired."	Dec. Shaw, ¶5 Pg. 2 Lines: 16-18	Lacks personal knowledge FRE 602	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled

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OBJECTIONS TO REPLY EVIDENCE

1	5.	"Drivers are also excluded from the U.S. Employee Handbook's guidance on meal and rest breaks because it states that the employees' supervisors would schedule their breaks."	Dec. Shaw, ¶5 Pg. 2 Lines: 18-20	Lacks personal knowledge FRE 602	<input checked="" type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
2				Best Evidence FRE 1002.	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
3	6.	"However, drivers' breaks are not scheduled by the Branch Managers."	Dec. Shaw, ¶5 Pg. 2, Lines: 20-21	Lacks personal knowledge FRE 602	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
4	7.	"Consistent with Trimac's policy, the Branch Managers inform the drivers of their right to a duty-free meal break (and a second duty-free meal break if the driver works more than 10 hours), and the drivers are free to take their breaks any time during their shifts."	Dec. Shaw, ¶5 Pg. 2 Lines: 21-23	Lacks personal knowledge FRE 602	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled
5	8.	"At Trimac, meal and rest breaks are left up to the individual driver, and the driver has options as to when he or she can take their breaks."	Dec. Penicks, ¶5	Lacks personal knowledge FRE 602	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
6	9.	"Drivers that I have trained out of Santa Clara usually have about three or so trips per day, meaning they are driving to a customer's facility and back to the Trimac terminal at least three times per day."	Dec. Penicks, ¶6	Lacks personal knowledge FRE 602	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
7	10.	"These drivers have the opportunity to take breaks throughout their day, but particularly during the unloading process either at the customer's facility or in the break room at the Trimac terminal while product is loaded at the Santa Clara facility."	Dec. Penicks, ¶7	Lacks personal knowledge FRE 602	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled

1	11.	"Most drivers that I train bring their lunches with them in the truck so that they have the option to eat it during unloading at the customer's facility or loading at the Santa Clara facility."	Dec. Penicks, ¶8	Lacks personal knowledge FRE 602	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
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5	12.	"Some drivers also leave their lunches in the refrigerator in the Trimac break room so they can eat when they get back from the customer's facility and product is being loaded onto a trailer by Air Products' employees."	Dec. Penicks, ¶9	Lacks personal knowledge FRE 602	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled
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10	13.	" <u>I have also stopped for trainees to pick up something to eat as needed</u> , but most guys understand it is easier to bring something along due to the difficulty of parking our trucks at traditional restaurants."	Dec. Penicks, ¶10 OVERRULED RE UNDERLINED TEXT; OTHERWISE SUSTAINED	Lacks personal knowledge FRE 602	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
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12					
13					
14	14.	"Drivers always have the ability to take breaks of at least 30 minutes, particularly because they are able to eat while their trucks are being loaded or unloaded either at the Trimac terminal or at the customer's facility."	Dec. Penicks, ¶11	Lacks personal knowledge FRE 602	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled
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19	15.	"Everybody understands they can take a break, <u>and I have never felt pressured to skip a break. I have also never pressured anyone to not take a break or told anyone they could not take a break.</u> "	Dec. Penicks, ¶12 OVERRULED RE UNDERLINED TEXT; OTHERWISE SUSTAINED	Lacks personal knowledge FRE 602	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
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23	16.	"The loading process typically takes about 45 minutes to one hour and is overseen by Air Products' employees, providing plenty of time to eat."	Dec. Penicks, ¶13	Lacks personal knowledge FRE 602	<input type="checkbox"/> Sustained <input checked="" type="checkbox"/> Overruled
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1	17.	"Drivers might put pressure on themselves to get their deliveries done as quickly as possible in order to get home to their families quicker~ but <u>Trimac does not apply any pressure to skip meal or rest breaks.</u> "	Dec. Penicks, ¶14 OVERRULED RE UNDERLINED TEXT; OTHERWISE SUSTAINED	Lacks personal knowledge FRE 602	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
6	18.	" <u>We drivers sometimes work 12 or even 14 hour days.</u> Drivers and trainees are able to take and do take second meal breaks on particularly long days, as <u>there is always time to do so during the loading process.</u> "	Dec. Penicks, ¶17 OVERRULED RE UNDERLINED TEXT; OTHERWISE SUSTAINED	Lacks personal knowledge FRE 602	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled
10	19.	" <u>Trimac actually provides some food, including sandwiches, at the Santa Clara terminal so that drivers or trainees can still eat if they forgot to bring something for lunch.</u> Other terminals also offer this service, which I think is nice for the drivers and trainees."	Dec. Penicks, ¶20 OVERRULED RE UNDERLINED TEXT; OTHERWISE SUSTAINED	Relevance FRE 402	<input type="checkbox"/> Sustained <input type="checkbox"/> Overruled

DATED: August 15, 2013

LAW OFFICES OF MICHAEL TRACY

/s/ Megan E. Ross

By:

MEGAN E. ROSS Attorney for Plaintiff
Douglas Roberts

IT IS SO ORDERED:

HOWARD R. LLOYD
U.S. MAGISTRATE JUDGE

DATE: 8/28/13